IN THE HIGH COURT OF SOUTH AFRICA,

FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	**NO**
Of Interest to other Judges:	**NO**
Circulate to Magistrates:	**NO**

Case number: **4120/2020**

In the matter between:

PIETER STRACHAN DU PLESSIS	Applicant

and

CRAIG GORDON VENTER	1st Respondent
HENRY TEETON WICKENS TROMP	2nd Respondent
MARIE TROMP	3rd Respondent
THOMAS MOODIE TROMP	4th Respondent

CORAM:	DAFFUE, J
HEARD ON:	4 DECEMBER 2020 & 15 JANUARY 2021
JUDGMENT BY:	DAFFUE, J
REASONS DELIVERED ON:	22 JANUARY 2021

I INTRODUCTION

[1] The dispute to be resolved *in casu* is about the care of and contact with a minor boy, Caden William Venter ("Caden") who will be 11 years in two months' time, he having been born on 26 March 2010.

[2] Caden's family has been split in two identifiable groups. On the one hand is his deceased mother's partner for the last three years of her life, he being supported in this litigation by Caden's parental grandfather and the grandfather's present wife. On the other side of the divide is Caden's biological father, supported by Caden's maternal grandparents and their one son, Caden's uncle.

[3] The dispute reminds me of a dispute between the two prostitutes that King Solomon from biblical times had to deal with in order to ascertain who the real mother of a living baby was. I quote from the New International Version of the Bible:

> "Then the king said, "Bring me a sword." So they brought a sword for the king. He then gave an order: "Cut the living child in two and give half to one and half to the other." The woman whose son was alive was deeply moved out of love for her son and said to the king, "Please, my lord, give her the living baby! Don't kill him!" But the others said, "Neither I nor you shall have him. Cut him in two!" Then the king gave his ruling: "Give the living baby to the first woman. Do not kill him; she is his mother."[1]

[1] 1 Kings 3 NIV, verses 24 - 27

II THE ORDERS GRANTED ON 18 JANUARY 2021

[4] After hearing argument on 15 January 2021 the following relief was granted on 18 January 2021:

"1. The application is postponed to and the rule *nisi* issued on 26 October 2020 as amended on 4 December 2020 and further amended as set out in paragraph 2 *infra* is extended to 22 July 2021.

2. Pending final determination of the main application:

2.1. Caden William Venter (Caden) shall remain in the care of and reside with applicant in Bloemfontein.

2.2. Applicant shall enrol Caden forthwith at Grey College Primary for the 2021 school year.

2.3. First respondent shall be responsible for the school fees (including any enrolment fees if applicable) for the first two terms of the 2021 school year, the costs of all school books, school stationery, school uniforms, school equipment and attire required by Caden as well as his costs pertaining to extra-curricular and sporting activities.

2.4. Applicant shall pay the fees and costs mentioned in paragraph 2.3 upfront and submit to first respondent an itemised statement of all such expenses incurred together with proof of payment whereupon first respondent shall reimburse applicant within 7 days.

2.5. First respondent shall have unsupervised contact, at his own costs, with Caden and the right to exercise such right in Johannesburg or Cape Town as follows:

(i) During the last weekend of January 2021 and thereafter during 2 weekends per month, a weekend to start at 14h00 on Friday and terminate at 18h00 on Sunday;

(ii) The first week of the March/April and the June/July public school holidays;

2.6 First respondent's right to contact shall include the right to telephonic and video call contact at all reasonable times.

2.7 The Second, Third and Fourth Respondents shall have telephonic and video call contact with Caden at all reasonable times as well as contact with him during the weekends and holidays allocated to first respondent and in cooperation with him.

2.8 First respondent's liability to keep Caden on his medical aid fund and to bear all reasonable medical costs as set out in paragraph 4.2 of the consent paper made an order of court on 11 April 2011 in case number 27070/2009 (Western Cape High Court), remains intact.

2.9 Caden shall attend fortnightly or more regularly if required counselling with a registered psychologist to be appointed by applicant and first respondent jointly and in the event of disagreement, by applicant.

2.10 Applicant and first respondent shall each submit themselves at their own costs to hair follicle drug tests by the end of each calendar month and provide the other party's legal representatives as well as the Family Advocate with the test results.

3. The Family Advocate is directed to investigate and to report to this court on/or before 30 June 2021 in respect of the best interests pertaining to the care and contact rights in respect of Caden, bearing in mind *inter alia* the expert reports already filed in this application, in particular the report

of Dr Ronel Duchen and the feasibility of the Family Bridges program advocated for with reference to the report of Christie Els on pages 1338 to 1348 of the indexed papers.

4. The parties shall be entitled to file further supplementary affidavits on/or before 10 July 2021, or if the Family Advocate's report is received earlier than 30 June 2021, within 10 days from receipt thereof.

5. Further heads of arguments shall be filed in accordance with the practice directives of this division.

6. Each of the parties shall be responsible for their own legal costs in respect of the counter application (which has become academic) as well as the main application incurred thus far."

[5] I indicated that brief reasons would be provided in due course. These are my reasons.

III THE PARTIES

[6] The applicant is Mr Pieter Strachan du Plessis, a businessman presently residing at Haldon Estate, Quaggafontein, Bloemfontein. He is represented in these proceedings by Adv N Snellenburg SC, assisted by Adv JF Mitchley, duly instructed by Phatshoane Henney Attorneys.

[7] Applicant and the late Mrs Chriselda Venter ("Chrissy") were living together as husband and wife since the middle of 2017 which relationship terminated as a consequence of the untimely death of Chrissy on 21 October 2020. They initially stayed at Chrissy's townhouse in Somerset West, but moved to Bloemfontein in

July/August 2020. A son, Layken who is 2 years old, was born from this relationship. Applicant, Chrissy, Caden and Layken (since his birth) have been staying together as a family unit, first of all in Somerset West and later on at Haldon House in Bloemfontein as indicated.

[8] Caden's paternal grandfather and his present wife associate themselves with applicant's application and actively support applicant in his attempt to obtain care of Caden as provided for in s 23 of the Children's Act.[2]

[9] First respondent is Mr Craig Gordon Venter, a businessman residing at the Blair Atholl Estate, Lanseria, Gauteng. Second respondent is his father-in-law, Mr Henry Teeton Wickens Tromp, a retiree residing in Somerset West. Third respondent is Mrs Marie Tromp, a female retiree, married to second respondent and also resident in Somerset West. Fourth respondent is Mr Thomas Moodie Tromp, an adult male and the son of second and third respondents, who is residing with them in Somerset West. The four respondents are represented in the proceedings by Adv JA Woodward SC, duly instructed by Billy Gundelfinger Attorneys.

[10] First respondent is the biological father of Caden. He and Chrissy married in 2009, which marriage lasted a mere ten months. At the time of the marriage Mr Venter was 47 years old which means that he must now be either 58 or 59. Chrissy left the communal home in Johannesburg during her pregnancy and moved in with her parents, the second and third respondents, in Somerset West.

[2] Act 38 of 2005

She eventually bought her own townhouse, a mere two street blocks away from her parents. Crissy's brother, cited as fourth respondent in this application, stayed with their parents and there can be no doubt that second to fourth respondents played a significant role to assist Chrissy in looking after Caden since his birth as she was employed most of the time. There is apparently a good relationship between first respondent on the one hand and his former parents-in-law and brother-in-law. The four respondents brought a counter application as will be shown later and were at all relevant times represented by the same legal team.

IV CADEN:

[11] I have already mentioned that Caden was born from the marriage relationship between Chrissy and first respondent and that he will be 11 years old on 26 March 2021. He attended the Somerset College from the outset. Since the lockdown caused by the Covid 19 pandemic, the aforesaid College resorted to online training as most other schools in the country. This made it possible for Caden to continue with his education whilst residing in Bloemfontein during the second half of 2020.

[12] Applicant and first respondent are in an agreement that Caden should not continue his education at the aforesaid College. Applicant wants to enrol him at Grey College Primary in Bloemfontein, whilst first respondent has already enrolled him at St John's College in Johannesburg, notwithstanding the fact that Caden was still in the care of the applicant in Bloemfontein in

accordance with the rule *nis*i issued on 26 October 2020 as amended on 4 December 2020.

[13] Caden said the following to Dr Ronel Duchen[3]:

"Caden included Layken, Strachan, Ouma Marie, Oupa Henry, Craig, Pieter the Pretorius family and Sheldin in his world. Caden referred to Julian and Jean as his "cousins". He refers to Mrs Pretorius as his "tannie". At this point, Caden repeated that basically, he wanted to stay with Mr Du Plessis. He then added Clarisse, who he referred to as his sister. Caden indicated that he and Layken could not leave each other alone… Caden referred to Strachan as his stepbrother… Caden explained who lived in the house before and after his mother died. He said "*Craig is my regte pa maar ek lief Pieter baie meer as my regte pa. Baie, baie meer.*" Caden explained that he calls Mr du Plessis "Doep" or "Superdoep.""

V THE HISTORY OF THE LITIGATION THUS FAR

[14] On 26 October 2020 applicant approached the court on an urgent basis and obtained a rule *nisi* with return date 3 December 2020 in terms whereof the respondents were called upon to show cause why the "sole care" of Caden should not be awarded to applicant, subject to first respondent's right to supervised contact in the presence of a social worker or psychologist of applicant's choosing. The *interim* orders applied with immediate effect pending finalisation of the application. The Family Advocate was directed to urgently investigate and report to the court pertaining to Caden's best interest in respect of care and contact rights.

[15] Instead of responding earlier to allow the filing of a replying affidavit, answering affidavits were served electronically as late as

[3] Par 16.2 of her report at pp 1131 and 1132 of the indexed papers

the 1st day of December 2020 and filed with the court only on 3 December 2020. Obviously, the court was put under severe pressure and without having the advantage of applicant's responses. By agreement between the parties the rule *nisi* was extended on the 3rd to the 4th of December 2020 when the matter was heard by me. The affidavits of the four respondents were also used in support of a counter application in terms whereof the discharge of the rule *nisi* issued on 26 October 2020 was sought, the appointment of Dr Ronel Duchen to make recommendations pertaining to the care of Caden, that he be returned to the care of the second, third and fourth respondents *pendente lite* and that first respondent as well as applicant be afforded reasonable rights of contact to him, the details which I do not need to repeat.

[16] After hearing argument, I amended the rule *nisi* of 26 October 2020 and ordered Caden to remain in the care of and reside with applicant pending finalisation of the matter. The rule *nisi* was extended to 15 January 2021 and Dr Ronel Duchen was appointed by agreement to provide the court with written findings and recommendations regarding primary residence, care and contact in respect of Caden. Provision was made for the filing of further affidavits.

[17] Affidavits were indeed filed as directed. Over and above that, the applicant and first respondent elected to file further supplementary affidavits at a very late stage. I also received an affidavit filed on behalf of first respondent over the weekend, after having heard argument on Friday, 15 January 2021. This is an unusual occurrence and should not have been done without the consent of

the applicant's legal representatives and leave of the court. However, bearing in mind the nature of the proceedings, I considered this late affidavit as well.

[18] It needs to be emphasised that I had the best interests of Caden in mind when I declined to make a final order on 4 December 2020. I also decided to hear this matter during the recess in the belief that a final determination could be made in respect of Caden's schooling for 2021. At that stage it was anticipated that schools would reopen on the 18th of January 2021 which turned out not to be the case.

[19] Although the Family Advocate was directed on 26 October 2020 to urgently investigate and report to the court, I was not provided with any report, either on 4 December 2020 or 15 January 2021. I also knew on 4 December 2020 that it would not be feasible to direct the Family Advocate to investigate and compile a report before 15 January 2021, bearing in mind the circumstances under which the employees of that office function, particularly considering the festive season that was on hand. Therefore, I did not bother to make any order in that regard. However, now that I have decided to extend the rule *nisi* until 22 July 2021, there is no reason why the Family Advocate should not be in a position to do a proper investigation and to report timeously, especially bearing in mind the valuable work that has been done so far.

VI RELEVANT LEGISLATION AND LEGAL PRINCIPLES

[20] I am primarily guided by our Constitution[4] in dealing with the present dispute. It is *inter alia* stated in ss 28(1)(b) "that every child has the right…. (b) to family care or parental care, or to appropriate alternative care when removed from the family environment" and more importantly, ss 28(2) reads as follows: "A child's best interests are of paramount importance in every matter concerning the child." These principles are echoed in the Children's Act.[5]

[21] Section 7 sets out all relevant factors to be taken into account pertaining to the best interests inquiry and needs not be quoted. In this regard the Constitutional Court, per Sachs J, took the following approach in *AD v DW & Others (Centre for Child Law as Amicus Curiae; Department for Social Development as intervening party)*[6]:

"Determining the best interests of the child cannot be circumscribed by mechanical legal formulae or through rigid hierarchical rankings of care options. As was stated in M:

> 'A truly principled child-centred approach requires a close and individualised examination of the precise real-life situation of the particular child involved. To apply a predetermined formula for the sake of certainty, irrespective of the circumstances, would in fact be contrary to the best interests of the child concerned.'

In practice this requires that a contextualised case-by-case enquiry be conducted by child protection practitioners and judicial officers versed in the principles involved in order to find the solution best adjusted to the child, taking into account his or her individual emotional wants, and the perils innate to each potential solution."

[22] Section 10 of the Children's Act reads as follows: "Every child that is of such an age, majority and stage of development as to be able to participate

[4] Act 108 of 1996
[5] See *inter alia* ss 7, 9, 10, 14 & 15
[6] 2008 (3) SA 183 (CC) at par 50

in any matter concerning that child has the right to participate in an appropriate way and views express by the child must be given due consideration."

[23] The following statement in *B v B*[7] is relevant in this regard:

"It is evident that the child's wishes are not the primary consideration or at all decisive in determining his or her best interests. The court must only give "due consideration" to whatever views the child expresses. It does not require deference to the child's expressed wishes: the duty of the court is to establish what is best for the child, and this may require the court to reach a decision that is different from what the child wants. The child's wishes must however be ascertained and considered".

[24] In *D v C*[8] the full bench concluded on appeal that it could not enforce the *court a quo's* order in respect of contact with a minor child who was adamant that she did not want to have contact with her farther. The young female was already 17 years old at the time the appeal was heard and made her feelings known in an affidavit. Her mother kept her away from her father notwithstanding court proceedings being dragged out in the High Court over an exorbitant period of time, to wit thirteen years. This was a clear case of parental alienation and the full court on appeal deemed it appropriate for the representative of the Centre of Child Law to attempt to consult with the minor in the hope that she could be convinced to establish contact with her father.

[7] [2015] ZAGPPHC 1014 (27 November 2015) at par 27
[8] [2016] ZAGPJHC 392 (18 August 2016)

[25] Applicant relies on s 23 of the Children's Act which reads as follows:

"(1) Any person having an interest in the care, well-being or development of a child may apply to the High Court, a divorce court in divorce matters or the children's court for an order granting to the applicant, on such conditions as the court may deem necessary-

(a) contact with the child; or

(b) care of the child.

(2) When considering an application contemplated in subsection (1), the court must take into account-

(a) the best interests of the child;

(b) the relationship between the applicant and the child, and any other relevant person and the child;

(c) the degree of commitment that the applicant has shown towards the child;

(d) the extent to which the applicant has contributed towards expenses in connection with the birth and maintenance of the child; and

(e) any other fact that should, in the opinion of the court, be taken into account.

(3) If in the course of the court proceedings it is brought to the attention of the court that an application for the adoption of the child has been made by another applicant, the court-

(a) must request a family advocate, social worker or psychologist to furnish it with a report and recommendations as to what is in the best interests of the child; and

(b) may suspend the first-mentioned application on any conditions it may determine.

(4) The granting of care or contact to a person in terms of this section does not affect the parental responsibilities and rights that any other person may have in respect of the same child."

[26] The prime function of an expert is to guide the court to a correct decision falling within the expert's specialised field. However, the expert's decision cannot displace that of the presiding officer who has to determine an issue to be tried. Innes CJ stated the following in *Van Wyk v Lewis*[9]:

> "The testimony of experienced members of the (medical) profession is of the greatest value in questions of this kind. (a case of medical negligence). But the decision of what is reasonable under the circumstances is for the court to decide; it will pay high regard to the views of the profession, but it is not bound to adopt them."

[27] I shall not for one moment in this judgment make any adverse comment in respect of the experienced and well-qualified Dr Duchen's credibility or neutrality, which is not doubted at all, but the following *dictum* by Diemont JA in *Stock v Stock*[10] cannot be ignored:

> "An expert in the field of psychology or psychiatry who is asked to testify in a case of this nature (custody of children), a case in which difficult emotional, intellectual and psychological problems arise within the family, must be made to understand that he is there to assist the Court. If he is to be helpful he must be neutral. The evidence of such a witness is of little value where he, or she, is partisan and consistently asserts the cause of the party who calls him. I may add that when it comes to assessing the credibility of such a witness, this Court can test his reasoning and is accordingly to that extent in as good a position as the trial Court was."

[9] 1924 AD 447

[10] 1981 (3) SA 1280 (AD) at 1296 E – F, cited with approval in P v P 2007 (5) SA 94 (SCA) at par 16

The matter at hand is clearly a case where this court needs and benefits from the opinion of experts, but an expert witness should not usurp the function of the court.

VII EVALUATION OF THE EVIDENCE AND SUBMISSIONS ON BEHALF OF THE PARTIES

[28] First respondent is Caden's biological father and unless something traumatic, dramatic or unforeseen occurs pending finalisation of this application, his right to care should be restored. However, in the meantime it is clear that Caden includes as his family not only first respondent, but also Layken, Strachan (applicant's 14 year old son), Ouma Marie (third respondent), Oupa Henry (second respondent), Pieter (applicant), the Pretorius family (applicant's sister, her husband and their children) and Sheldin (applicant's daughter). Julian and Jean, the sons of Mr and Mrs Pretorius, are regarded as his cousins. On questions by Dr Duchen, Caden responded *inter alia* as follows:

"*Craig* (first respondent) *is my regte pa maar ek lief Pieter baie meer as my regte pa. Baie, baie meer.*". He also calls applicant "Doep" or "Superdoep". They ride motorbikes together and applicant was the one that took him to school and fetched him from school.[11] On more than one occasion Caden reiterated that he wanted to live with applicant and Layken.

[11] See indexed papers pp 1131 & 1132

[29] Although second, third and fourth respondents were always there for Caden since his birth resulting in a strong bond between them, there cannot be any doubt that this emotional bond deteriorated since 2019. I do not intend to come to any final conclusions in this regard, but it is apparent, at least *prima facie*, that applicant might have played a negative roll in this regard. The Tromp family do not like applicant and never liked him. They reprimanded their daughter, Chrissy, not to get involved with applicant, a married man. No doubt there is severe animosity between applicant and the Tromps. It is not an issue of speculation: whatever people say under oath, logic dictates that this apparent animosity had rubbed off on Caden as is evidenced in the report of Dr Duchen.

[30] Ms Woodward referred to several paragraphs in Dr Duchen's report to indicate that applicant was advancing Chrissy's narrative in terms whereof her parents in particular were humiliated to a great degree, suggesting that he might have been influential in the rift between Caden and his maternal grandparents.

[31] Contrary to first respondent's assurances to Dr Duchen and this court on more than one occasion in his affidavits, he tested positive for an illegal substance. I quote the following from the test results of the Forensic Toxicology Laboratory of the University of Pretoria:[12]

> "Ephedrine is also a metabolite of Methamphetamine and Methcathinone…… Amphetamine, Methamphetamine and Ephedrine were detected in the hair sample analysed. The presence of Amphetamine, Methamphetamine and Ephedrine supports the intake of Methamphetamine during the approx. four weeks prior to sample collection."

[12] Page 4 of the report on p 472 of the indexed papers

These tests were conducted on 25 November 2020, a month after the rule *nisi* was issued.

[32] Notwithstanding the supervised contact rights granted to first respondent in 2011, he never cared to bring an application for variation of the order to ensure unsupervised and more regular contact over weekends and holidays in particular. In fact, save for the trip to Monaco, on his own evidence he merely visited Caden for a few hours at a time on about eleven occasions per year during 2016, 2017 and 2018.

[33] First respondent is a bachelor and is old enough to have been Caden's grandfather. He has never been married, save for the 10 months of marriage with Chrissy. It is gathered from the papers that although he has been involved in several relationships with different women, none of these relationships lasted for any considerable period of time. He is a true bachelor and retired businessman who enjoys socialising. He has never had to care for a minor child on a 24/7 basis. He never had to rise during the night to attend to a sick child; he never had to wake up early to prepare his child for school and to transport him there; or to stay at home most evenings and weekends to bond with his child and/or to assist with his school work. He says that he will make use of experts and other people to assist him in taking proper care of Caden, but unlike applicant and his sister, Mrs Pretorius, who have children of their own and who have been living with them, he lacks experience in parenthood. At this stage, especially, Caden needs nurturing, love and affection, *inter alia* to deal with the loss of his

mother at the tender age of 10 years. It would also be wrong to separate him and Layken at this stage and without proper counselling.

[34] I accept that applicant is also involved in what he calls a "messy" divorce, that to an extent he neglected his own children when he started living with Chrissy and Caden. Fact of the matter is that his eldest son and his major daughter are supportive of him and since the middle of 2020, his son Strachan, who was in the care of his wife up until then, has been residing with him in Bloemfontein. Applicant has the support of his sister, Mrs Pretorius, in particular.

[35] At this stage of the proceedings I do not have to deal at length, or at all, with any of the tests conducted by Dr Duchen, but it is apparent that she is of the view that Caden cannot merely be handed over to first respondent without any further ado. Therefore, the following is recommended by the expert:[13]

"(a) A variation of residency. Cayden should reside with his father.

(b) The implementation of the Family Bridges Program and aftercare system."

She continued to say that:

"It is envisaged that Mr Tommie Tromp would be available during the first week to support Mr Venter and Caden." Also: "It is envisaged that Caden will have no contact with Mr du Plessis for a period of at least 4-6 weeks to provide him with the opportunity to settle in with Mr Venter. After Mr du Plessis has completed his section of Mrs Els' program, contact should be facilitated in a structured manner."

[13] Par 24 of the report at p 1218 of the indexed papers

[36] Dr Duchen found it necessary to attach a document dated January 2020, prepared by Mrs Christie Els, a counselling psychologist of George, to her report.[14] Readers of this report are invited to visit a website, details of which are provided in the report for further information. I have done so. It is clear that the report of Mrs Els is merely a regurgitation of what is stated on the website. There is no indication how "the team of two professionals and an administrative assistant" would be elected and what kind of professionals are referred to. No professionals are identified. There is also no indication as to their availability at any given time. Clearly, there must be much doubt whether a workshop of three to four consecutive days as suggested could bear any fruit. Therefore, a vacation afterwards is also suggested. I quote from the report:

> "Following the conclusion of the workshop, the participants take a minimum five-day vacation to assist in consolidating the gains they have achieved during the workshop before returning home."[15]

[37] The Family Bridges Programme might have been implemented in the United States of America and some other countries for a number of years, but there is no proof of any successful implementation thereof in this country. Mrs Els did not provide us with any details in this regard.

[38] In my view Caden should be allowed more opportunities to form a closer bond with his biological father in a natural way. Therefore, I ordered that first respondent should have unsupervised contact with him during the last weekend of January, two weekends per

[14] Indexed papers pp 1338 and 1348
[15] Indexed papers p 1343

month from then onwards, the first week of the March/April's as well as the first week of the June/July public school holidays. Over and above that he should have reasonable telephonic and video call access to Caden as well. I also provided for contact between Caden and his maternal grandparents. I accept that I intruded on first respondent's right to have Caden placed in a school of his choice, but in my view, my order makes practical sense insofar as I was seriously concerned to allow Caden at this stage to be placed in the care of his biological father in Johannesburg without the bond between them being strengthened at first. By July 2021 the evidence may turn out to show that first respondent's care in respect of Caden should be restored fully. The time will tell us.

[39] During his argument Mr Snellenburg presented me with two draft orders in terms whereof the application be postponed and the rule *nisi* extended to 22 July 2021 in both instances. In terms of scenario 1 applicant's care of Caden should be extended pending finalisation of the application and in scenario 2 Caden's care is awarded to first respondent. Provision is made in both instances for Caden's counselling by an expert on an ongoing basis and for regular drug tests to be undertaken by applicant and first respondent. It is thus clear that Mr Snellenburg came to the conclusion that I was not in a position to make any final order pertaining to the care and contact of Caden at this stage.

[40] In the draft providing for Caden's care by applicant, contact rights to Caden over three weekends per month were suggested, two weekends to be granted to first respondent and a third weekend to second, third and fourth respondents. In my view such an

arrangement will have a detrimental effect on Caden, especially bearing in mind his expected participation in school activities over weekends from time to time.

[41] Ms Woodward on the other hand, took a totally different stance. She submitted that the rule *nisi* should be discharged and the application dismissed. She primarily relied on the report of Dr Duchen and her recommendations. She insisted that the Family Bridges Programme endorsed by Dr Duchen was a helpful aid to strengthen the emotional bond between father and son. Contrary to Dr Duchen's suggestion that fourth respondent, Caden's uncle, be available for a week to support first respondent and Caden, Ms Woodward presented to me during argument her attorney's instructions that third respondent, the maternal grandmother, would be available to assist father and son and that she would be accommodated in first respondent's house. This 77 year old lady, who had done superbly to assist Chrissy in caring for Caden from his birth, had already indicated earlier that she did not have the energy anymore to look after Caden. Also, her husband is seriously ill. This suggestion is not a viable option.

[42] The orders granted should not be seen as an attempt to increase a possible gap in the emotional ties between Caden and his maternal grandparents and uncle. In fact, I am of the view that the maternal grandparents, third respondent in particular, played a decisive role in Caden's upbringing and this should never be belittled or disregarded. The evidence is also clear that fourth respondent made a huge impact on Caden's life although applicant has gone out of his way to criticize him and down-play his role.

[43] It should be mentioned at this stage that the counter application has become academic, save for the first prayer that the rule *nisi* be discharged. It provided for *interim* measures pending finalisation of the main application.

[44] The urgent application was necessary. First respondent, who had infrequent contact with Caden during a period of about 11 years – his whole life - decided to remove him from his residence in Bloemfontein a few days after his mother had passed away. Applicant had to intervene by means of an urgent interdict. On the other hand, respondents were entitled to oppose the application to ensure that the court was placed in a better position to adjudicate the matter than it would have been without the most helpful report of Dr Duchen.

[45] Both legal representatives were *ad idem* that whatever the outcome, the parties should be ordered to pay their own legal costs and that this court may make such order at this stage of the proceedings pertaining to the costs incurred thus far.

VIII CONCLUSION

[46] I did my best in providing these reasons not to prejudge the characters, lifestyle and habits of applicant and first respondent. Much more - positive and negative - could have been said in respect of both of them and if necessary that may be done on the extended return date if this matter is allocated to me again and after receiving further evidence and arguments. However, I accept

that all of us make mistakes from time to time and that there is no such a thing as the perfect parent or care-giver. In arriving at the orders granted on 18 January 2021 I merely tried to do my best to find the least detrimental available alternative for safeguarding Caden's growth and development pending finalisation of this application.

[47] I have now directed the Family Advocate to report on the matter and issued certain directives in this regard. Bearing in mind the festive season and the fact that the Office of the Family Advocate would not have the human resources to present a meaningful report in a period of six weeks, I did not deem it feasible to make an order when the matter was heard on 4 December 2020. However, now much more time is provided to the Family Advocate who will also be placed in possession of the evidence and detailed reports of several experts. Come 22 July 2021, whoever is allocated the matter will be in a much better position to make final orders.

[48] I conclude by emphasising that the court must ensure that the fullest protection is afforded to Caden. No final order could be made in circumstances where I was not satisfied that all reasonable inquiries had been undertaken. At this stage of the proceedings first respondent's own father and brothers are not in agreement as to his suitability to be awarded Caden's care. The 2011 divorce order, incorporating the consent paper with parental plan, catered for first respondent's contact to Caden under supervision. He never cared to apply for an appropriate amendment. Contrary thereto, applicant has been acting as care-

giver of Caden for the last three and a half years. They have been living together under one roof. If the factors contained in ss 23(2) of the Children's Act quoted above are considered, it is clearly in Caden's best interests to remain in the care of applicant at this stage. An extremely good relationship exists between these two and applicant has shown a high degree of commitment towards Caden. No doubt, he has also contributed towards Caden's expenses, especially taking into consideration Chrissy's long illness, the dispute about arrear maintenance and first respondent's admission in this regard. The close bond between Layken and Caden and the trauma which they need to overcome as brothers who have lost a mother should not be underestimated.

J P DAFFUE, J

On behalf of Applicant	:	Adv N Snellenburg SC and Adv JF Mitchley
Instructed by	:	Phatshoane Henney Inc Bloemfontein
On behalf of Respondent	:	Adv JA Woodward SC
Instructed by	:	Billy Gundelfinger Attorneys Johannesburg c/o McIntyre & Van Der Post Bloemfontein